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11 OAKLAND POLICE DEPARTMENT, WAYNE
12 TUCKER, RAMON J. ALCANTAR

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN ORTEGA, A
Minor, By and through his Guardian Ad
Litem, ANA ROSA ORTEGA,

Plaintiffs,

v.

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, In His
Capacity as the Police Chief of the City of
Oakland, RAMON J. ALCANTAR,
Individually and in his capacity as a Police
Officer for the City of Oakland, DOES 1
THROUGH 200,

Defendants.

Case No. C07-02659 JCS

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT**

Defendants CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT, POLICE
CHIEF WAYNE TUCKER, and POLICE OFFICER RAMON J. ALCANTAR, hereby
answer, object, and otherwise respond to the First Amended Complaint on file herein as

follows.

INTRODUCTION

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, deny each and every allegation contained herein.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, deny each and every allegation contained herein.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, deny each and every allegation contained herein.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, deny each and every allegation contained herein.

5. Defendants admit that Chief Tucker and Officer Alcantar act under the color of state law. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and on that basis, deny each and every remaining allegation contained herein.

6. Defendants deny that there are policies or customs of the City of Oakland as alleged in this paragraph and further deny that any actions of defendants violated any constitutional rights of plaintiffs. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and on that basis, deny each and every remaining allegation contained herein.

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JURISDICTION

2 7. Defendants deny that any unlawful acts or practices as alleged
3 occurred. Defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the remaining allegations in this paragraph and on that basis, deny each and
5 every remaining allegation contained herein.

6 8. Defendants are without knowledge or information sufficient to form a
7 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
8 every allegation contained herein.

9 9. Defendants are without knowledge or information sufficient to form a
10 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
11 every allegation contained herein.

12 10. Defendants admit the allegations contained in this paragraph.

13 11. Defendants admit the allegations contained in this paragraph.

14 12. Defendants admit that Officer Alcantar is a police officer for the City of
15 Oakland and that he acts under the color of state law. Defendants are without knowledge
16 or information sufficient to form a belief as to the truth of the remaining allegations in this
17 paragraph and on that basis, deny each and every remaining allegation contained herein.

13. Defendants deny that plaintiffs were injured or damaged in any way.

19 The remaining portions of the paragraph contain statements and conclusions of law not
20 requiring a response from defendants.

21 14. Defendants are without knowledge or information sufficient to form a
22 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
23 every allegation contained herein.

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STATEMENT OF FACTS

1 15. Defendants are without knowledge or information sufficient to form a
2 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
3 every allegation contained herein.

4 16. Defendants are without knowledge or information sufficient to form a
5 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
6 every allegation contained herein.

7 17. Defendants are without knowledge or information sufficient to form a
8 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
9 every allegation contained herein.

10 18. Defendants admit that Chief Tucker and Officer Alcantar act under the
11 color of state law. Defendants are without knowledge or information sufficient to form a
12 belief as to the truth of the remaining allegations in this paragraph and on that basis, deny
13 each and every remaining allegation contained herein.

14 19. Defendants deny that there are policies or customs of the City of
15 Oakland as alleged in this paragraph. Defendants are without knowledge or information
16 sufficient to form a belief as to the truth of the remaining allegations in this paragraph and
17 on that basis, deny each and every remaining allegation contained herein.

FIRST CAUSE OF ACTION

19 20. Defendants incorporate herein their responses to the allegations
20 contained in paragraphs 1 through 19, as previously set forth.

21 21. Defendants admit that the United States Constitution protects certain
22 rights as set forth in this paragraph. Defendants further admit that defendants act under
23 the color of state law. Defendants deny the remaining allegations contained in this
24 paragraph of the complaint.

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26 ||| 22. Defendants deny that plaintiffs suffered any injuries or damages as a

|| result of any act of defendants.

SECOND CAUSE OF ACTION

23. Defendants incorporate herein their responses to the allegations contained in paragraphs 1 through 22, as previously set forth.

5 24. Defendants deny the allegations contained in paragraph 24 of the
6 complaint.

7 25. Defendants deny the allegations contained in paragraph 25 of the
8 complaint.

THIRD CAUSE OF ACTION

10 26. Defendants incorporate herein their responses to the allegations
11 contained in paragraphs 1 through 25, as previously set forth.

12 27. Defendants deny the allegations contained in paragraph 27 of the
13 complaint.

14 28. Defendants deny the allegations contained in paragraph 28 of the
15 complaint.

16 29. Defendants deny the allegations contained in paragraph 29 of the
17 complaint.

18 30. Defendants deny that plaintiffs suffered any injuries or damages as a
19 result of any act of defendants. Defendants deny the remaining allegations set forth in this
20 paragraph of the complaint.

FOURTH CAUSE OF ACTION

22 31. Defendants incorporate herein their responses to the allegations
23 contained in paragraphs 1 through 30, as previously set forth.

24 32. Defendants deny the allegations contained in paragraph 32 of the
25 complaint.

33. Defendants deny that defendants are liable under any theory or in any

1 sum to plaintiffs. The remaining portions of the paragraph contain statements and
2 conclusions of law not requiring a response from defendants.

3 34. Defendants deny that plaintiffs suffered any injuries or damages as a
4 result of any act of defendants.

FIFTH CAUSE OF ACTION

6 35. Defendants incorporate herein their responses to the allegations
7 contained in paragraphs 1 through 34, as previously set forth.

8 36. Defendants deny the allegations contained in paragraph 36 of the
9 complaint.

10 37. Defendants are without knowledge or information sufficient to form a
11 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
12 every allegation contained herein.

13 38. Defendants deny that plaintiffs suffered any injuries or damages as a
14 result of any act of defendants.

SIXTH CAUSE OF ACTION

16 39. Defendants incorporate herein their responses to the allegations
17 contained in paragraphs 1 through 38, as previously set forth.

18 40. Defendants deny the allegations contained in paragraph 40 of the
19 complaint, and further deny that plaintiffs suffered any injuries or damages as a result of
20 any act of defendants.

21 41. Defendants are without knowledge or information sufficient to form a
22 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
23 every allegation contained herein.

24 42. Defendants deny that plaintiffs suffered any injuries or damages as a
25 result of any act of defendants.

SEVENTH CAUSE OF ACTION

1 || 43. Defendants incorporate herein their responses to the allegations
2 || contained in paragraphs 1 through 42, as previously set forth.

3 44. Defendants deny the allegations contained in paragraph 44 of the
4 complaint, and further deny that plaintiffs suffered any injuries or damages as a result of
5 any act of defendants.

6 45. Defendants deny that plaintiffs suffered any injuries or damages as a
7 result of any act of defendants and further deny that plaintiffs are entitled to an award of
8 punitive damages.

EIGHTH CAUSE OF ACTION

10 46. Defendants incorporate herein their responses to the allegations
11 contained in paragraphs 1 through 45, as previously set forth.

12 47. Defendants admit that Chief Tucker and Officer Alcantar have a duty
13 of care in their capacities as Chief of Police and police officer, respectively, to avoid
14 causing unnecessary physical harm and emotional distress to citizens. Defendants deny
15 the remaining allegations contained in paragraph 47 of the complaint and further deny that
16 plaintiffs suffered any injuries or damages as a result of any act of defendants.

NINTH CAUSE OF ACTION

18 48. Defendants incorporate herein their responses to the allegations
19 contained in paragraphs 1 through 47, as previously set forth.

20 49. Defendants deny the allegations contained in paragraph 49 of the
21 complaint.

22 50. Defendants deny the allegations contained in paragraph 50 of the
23 complaint, and further deny that plaintiffs suffered any injuries or damages as a result of
24 any act of defendants.

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26 | 51. Defendants deny the allegations contained in paragraph 51 of the

|| complaint.

2 52. Defendants deny that plaintiffs are entitled to either injunctive relief or
3 an award of attorneys' fees as alleged in paragraph 52 of the complaint.

CLAIM REQUIREMENT

5 53. This paragraph contains statements and conclusions of law not
6 requiring a response from defendants.

JURY DEMAND

8 54. This paragraph contains statements and conclusions of law not
9 requiring a response from defendants.

AFFIRMATIVE DEFENSES

11 AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,
12 defendants allege that the complaint fails to state a claim upon which relief can be
13 granted.

14 AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,
15 defendants allege, on information and belief, that plaintiffs did not exercise ordinary care,
16 caution, or prudence to avoid the alleged event and/or accident; consequently, the
17 subsequent injuries or damages, if any, sustained by plaintiffs were proximately caused by
18 and contributed to by plaintiffs' comparative negligence, and any damages they might
19 otherwise be entitled to should be proportionately reduced by the degree of plaintiffs'
20 negligence.

21 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,
22 defendants allege that the injuries and damages plaintiffs complain of resulted from the
23 acts and/or omissions of others, or acts of God, and without any fault on the part of
24 defendants.

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26 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,

1 defendants allege that any party or individual who contributed to and/or caused the alleged
2 injuries and damages was not acting as its agent or with its knowledge or within the course
3 and/or scope of employment with defendant CITY OF OAKLAND.

4 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,
5 defendants allege that, to the extent that plaintiffs may attempt to allege state claims,
6 these are barred by all applicable Government Code protections and immunities,
7 including, but not limited to, sections 815 through 900. Said sections are pleaded as
8 though fully set forth herein.

9 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,
10 defendants allege that all of the actions of defendants were undertaken in good faith and
11 with the reasonable belief that such actions were valid, necessary, reasonable, lawful and
12 constitutionally proper, entitling defendants to the qualified immunity of good faith.

13 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
14 defendants allege that, if they in any fashion caused the injuries or damages alleged,
15 although such liability is expressly denied herein, their acts and/or omissions were
16 reasonable and privileged.

17 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,
18 defendants allege, on information and belief, that plaintiffs failed to mitigate damages.

19 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,
20 defendants allege that, to the extent that plaintiffs allege or assert matters not contained in
21 a legally sufficient claim filed by them, this action is barred by the claims requirements set
22 forth in Government Code Section 905 et seq.

23 AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
24 defendants allege that this action is barred, under Government Code § 945.6, by plaintiffs'
25 failure to file their action within six months after denial of their claim by defendants.

26 AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

1 defendants allege that this action is barred by all applicable statutes of limitations.

2 AS A FURTHER, TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,

3 defendants allege that any force used in this instance was reasonable.

4 AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE

5 DEFENSE, defendants allege that any actions taken by defendants were taken pursuant
6 to a lawful and valid policy of the City of Oakland.

7 AS A FURTHER, FOURTEENTH, SEPARATE AND AFFIRMATIVE

8 DEFENSE, defendants allege that plaintiffs caused the actions of which plaintiffs
9 complain.

10 AS A FURTHER, FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

11 defendants allege that any actions taken against plaintiffs were pursuant to a lawful
12 detention and/or arrest.

13 AS A FURTHER, SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

14 defendants allege that any actions taken against plaintiffs were necessary to protect officer
15 safety.

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PRAYER

1 **WHEREFORE**, defendants pray that:

2 1. Plaintiffs take nothing by their Complaint;

3 2. Defendants have judgment against Plaintiffs;

4 3. Defendants be awarded their costs of suit; and

5 4. For such other and further relief as the Court may deem proper.

6 DATED: SEPTEMBER 17, 2007

7 JOHN A. RUSSO, City Attorney
8 RANDOLPH W. HALL, Assistant City Attorney
9 JAMES F. HODGKINS, Supervising Trial Attorney
CHARLES E. VOSE, Senior Deputy City Attorney

10 By: _____ / S/
11 Attorneys for Defendants CITY OF OAKLAND, OAKLAND
12 POLICE DEPARTMENT, WAYNE TUCKER, and RAMON
13 J. ALCANTAR

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